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13 Attorneys for Plaintiff United States of America

14 IN THE UNITED STATES DISTRICT COURT  
15 SOUTHERN DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 v.

19 BRIAN CHUCHUA, AL JULIAN,  
and JOE WEBER III,

20 Defendants.  
21

Case No. 01 CV 1479DMS (AJB)

[PROPOSED] PARTIAL  
CONSENT DECREE WITH  
DEFENDANT WEBER

22 WHEREAS, the Plaintiff, the United States of America, on behalf of the United States  
23 Environmental Protection Agency ("EPA"), filed the Complaint herein against Defendants Brian  
24 Chuchua, Al Julian, and Joe Weber III (collectively, "Defendants"), alleging that Defendants  
25 violated Sections 301(a), 308(a), 309(a) of the CWA, 33 U.S.C. §§ 1311(a), 1318(a), 1319(a);

26 WHEREAS, the Complaint alleges that Defendants violated CWA Section 301(a) by  
27 discharging dredged or fill material and/or controlling and directing the discharge of dredged or  
28

1 fill material into waters of the United States at the Oasis Ranch site located in San Diego County,  
2 California (the "Site") and more fully described in the Complaint, without authorization by the  
3 United States Department of the Army Corps of Engineers ("the Corps");

4 WHEREAS, the Complaint seeks (1) to enjoin the discharge of pollutants into waters of  
5 the United States in violation of CWA Section 301(a), 33 U.S.C. § 1311(a); (2) to require  
6 Defendants, at their own expense and at the direction of EPA, to restore and/or mitigate the  
7 damages caused by their unlawful activities; and (3) to require Defendants to pay civil penalties  
8 as provided in 33 U.S.C. § 1319(d);

9 WHEREAS, this Consent Decree is intended to constitute a complete and final settlement  
10 of the United States' claims against Defendant Weber under the CWA set forth in the Complaint  
11 regarding the Site;

12 WHEREAS, the United States and Defendant Weber agree that settlement of this case is  
13 in the public interest and that entry of this Consent Decree is the most appropriate means of  
14 resolving the United States' claims under the CWA against Defendant Weber in this case; and

15 WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement  
16 of the United States' claims against Defendant Weber in this case, and that this Consent Decree  
17 adequately protects the public interest in accordance with the CWA and all other applicable  
18 federal law.

19 THEREFORE, before the taking of any testimony upon the pleadings, without further  
20 adjudication of any issue of fact or law, and upon consent of the parties hereto by their  
21 authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

22 I. JURISDICTION AND VENUE

23 1. This Court has jurisdiction over the subject matter of these actions and over the  
24 parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33  
25 U.S.C. § 1319(b).

26 2. Venue is proper in the Southern District of California pursuant to CWA Section  
27 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because Defendant Weber  
28 conducts business in this District, the subject property is located in this District, and the causes

1 of action alleged herein arose in this District.

2 3. The Complaint states claims upon which relief can be granted pursuant to  
3 Sections 301(a), 308(a), 309(a) of the CWA, 33 U.S.C. §§ 1311(a), 1318(a), 1319(a).

4 II. APPLICABILITY

5 4. The obligations of this Consent Decree shall apply to and be binding upon  
6 Defendant Weber and any person, firm, association or corporation who is, or will be, acting in  
7 concert or participation with Defendant Weber whether or not such person has notice of this  
8 Consent Decree. In any action to enforce this Consent Decree against Defendant Weber,  
9 Defendant Weber shall not raise as a defense the failure of any person, firm or corporation acting  
10 in concert or participation with Defendant Weber, to take any actions necessary to comply with  
11 the provisions hereof.

12 III. SCOPE OF CONSENT DECREE

13 5. This Consent Decree shall constitute a complete and final settlement of all civil  
14 claims for injunctive relief and civil penalties alleged in the Complaint against Defendant Weber  
15 under CWA Sections 301(a), 308(a), 309(a), 33 U.S.C. §§ 1311(a), 1318(a), 1319(a), concerning  
16 the Site.

17 6. It is the express purpose of the parties in entering this Consent Decree to further  
18 the objectives set forth in CWA Section 101, 33 U.S.C. § 1251. All obligations in this Consent  
19 Decree shall have the objective of causing Defendant Weber to achieve and maintain full  
20 compliance with, and to further the purposes of, the CWA.

21 7. Except as in accordance with this Consent Decree, Defendant Weber and his  
22 agents, successors and assigns are enjoined from discharging any pollutant into waters of the  
23 United States, unless such discharge complies with the provisions of the CWA and its  
24 implementing regulations.

25 8. This Consent Decree is not and shall not be interpreted to be a permit or  
26 modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33  
27 U.S.C. §§ 1342 or 1344, or any other law. Nothing in this Consent Decree shall limit the ability  
28 of the Corps to issue, modify, suspend, revoke or deny any individual permit or any nationwide

1 or regional general permit, nor shall this Consent Decree limit the EPA's ability to exercise its  
2 authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c).

3 9. This Consent Decree in no way affects or relieves Defendant Weber of his  
4 responsibility to comply with any applicable federal, state, or local law, regulation or permit.

5 10. This Consent Decree in no way affects the rights of the United States as against  
6 any person not a party to this Consent Decree.

7 11. The United States reserves any and all legal and equitable remedies available to  
8 enforce the provisions of this Consent Decree and applicable law.

9 12. Nothing in this Consent Decree shall constitute an admission of fact or law by any  
10 party.

#### 11 IV. SPECIFIC PROVISIONS

12 13. Defendant Weber shall pay a civil penalty to the United States in the total amount  
13 of Six Thousand Dollars (\$6,000.00). This civil penalty is payable in thirty (30) monthly  
14 installments of Two Hundred Dollars (\$200) per month. The first installment shall be paid  
15 within thirty (30) days of entry of this Consent Decree. Thereafter, Defendant Weber shall pay  
16 the United States \$200 per month for twenty-nine (29) months. All payments after the initial  
17 payment shall be received by the United States no later than the fifteenth (15<sup>th</sup>) day of every  
18 month, beginning in the month immediately following the first payment.

19 14. Defendant Weber shall make the above-referenced payments by check payable to  
20 "Treasurer, United States of America", referencing U.S.A.O. file number 2001V00519, EPA  
21 Region IX and the DOJ case number 90-5-1-1-16111. Payments shall be made in accordance  
22 with instructions provided to Defendant Weber by the Financial Litigation Unit of the United  
23 States Attorney's Office for the Southern District of California. Any payment received by the  
24 Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

25 15. Upon payment of each monthly installment of the civil penalty required by this  
26 Consent Decree, Defendant Weber shall provide written notice to EPA, at the address specified  
27 in Paragraph 22.A of this Consent Decree, that such payment was made in accordance with  
28 Paragraphs 13 and 14.

1           16. Civil penalty payments pursuant to this Consent Decree (including stipulated  
2 penalty payments under Section V) are penalties within the meaning of Section 162(f) of the  
3 Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and are not tax deductible  
4 expenditures for purposes of federal law.

5           17. Upon receipt of the total civil penalty required by this Consent Decree (including  
6 stipulated penalty payments under Section V), the United States shall promptly move the Court  
7 to dismiss the Complaint against Defendant Weber.

8   V. STIPULATED PENALTIES

9           18. After entry of this Consent Decree, if Defendant Weber fails to timely fulfill any  
10 requirement of the Consent Decree, the Defendant shall pay a stipulated penalty to the United  
11 States for each violation of each requirement of this Consent Decree as follows:

- |    |    |                                |                  |
|----|----|--------------------------------|------------------|
| 12 | A. | For Day 1 up to and including  | \$50.00 per day  |
| 13 |    | Day 30 of non-compliance       |                  |
| 14 | B. | For Day 31 up to and including | \$100.00 per day |
| 15 |    | 60 of non-compliance           |                  |
| 16 | C. | For Day 61 and beyond          | \$200.00 per day |
| 17 |    | of non-compliance              |                  |

18 Such payments shall be made upon demand by the United States.

19           19. In the event that a stipulated penalty payment is applicable and not made on time,  
20 interest will be charged in accordance with the statutory judgment interest rate provided for in 28  
21 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the  
22 date the payment is made. The interest shall also be compounded annually.

23           20. Any stipulated penalty accruing pursuant to this Consent Decree shall be payable  
24 upon demand and due not later than 30 days after Defendant's receipt of EPA's written demand.  
25 Payment shall be made as specified in Section IV, paragraph 14, above.

26           21. The United States may, in the unreviewable exercise of its discretion, reduce or  
27 waive stipulated penalties otherwise due it under this Consent Decree.

28   VI. ADDRESSES

          22. All notices and communications required under this Consent Decree shall be

made to the parties through each of the following persons and addresses:

A. TO EPA:

Marcela von Vacano  
Assistant Regional Counsel  
United States Environmental Protection Agency  
Region IX, ORC-2  
75 Hawthorne Street  
San Francisco, CA 94105

B. TO THE UNITED STATES DEPARTMENT OF JUSTICE

Pamela S. Tonglao, Attorney  
Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986

C. TO DEFENDANT WEBER:

Joe P. Weber III  
23980 Vista Way  
Quail Valley, CA 92587

VII. COSTS OF SUIT

23. Each party to this Consent Decree shall bear its own costs and attorneys' fees in this action. Should Defendant Weber subsequently be determined by the Court to have violated the terms or conditions of this Consent Decree, Defendant Weber shall be liable for any costs or attorneys' fees incurred by the United States in any action against Defendant Weber for noncompliance with or enforcement of this Consent Decree.

VIII. PUBLIC COMMENT

24. The parties acknowledge that after the lodging and before the entry of this Consent Decree, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. Defendant Weber agrees not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States has notified Defendant Weber in writing that it no longer supports entry of the Consent Decree.

IX. CONTINUING JURISDICTION OF THE COURT

25. This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree consistent with applicable law. During the pendency of the Consent Decree, any party may apply to the Court for any relief necessary to construe and effectuate the Consent Decree.

X. MODIFICATION

26. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. Any modification of this Consent Decree shall be in writing, and shall not take effect unless signed by both the United States and Defendant Weber and approved by the Court.

XI. TERMINATION

27. This Consent Decree may be terminated by either of the following:

A. The United States may at any time make a unilateral motion to the Court for termination of this Decree or any portion of it; or

B. Defendant Weber may make a unilateral motion to the Court to terminate this Decree after the following has occurred:

1. Defendant Weber has paid all penalties and other monetary obligations hereunder and no penalties or other monetary obligations are outstanding or owed to the United States;
2. Defendant Weber has certified compliance with the requirements of subparagraph 1 above to the Court and EPA; and
3. within forty-five (45) days of receiving such certification from Defendant Weber, EPA has not contested in writing that such compliance has been achieved. If EPA disputes Defendant Weber's full compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court.

1 IT IS SO ORDERED.

2 Dated and entered this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

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5 United States District Judge  
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2 FOR THE UNITED STATES:  
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4 THOMAS L. SANSONETTI  
5 Assistant Attorney General  
6 Environment and Natural Resources Division  
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Dated: \_\_\_\_\_

9 \_\_\_\_\_  
10 PAMELA S. TONGLAO  
11 ROBERT H. FOSTER  
12 Environmental Defense Section  
13 Environment and Natural Resources Division  
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Assistant Administrator for Enforcement  
and Compliance Assurance  
U.S. Environmental Protection Agency  
Washington, D.C. 20460

Dated: \_\_\_\_\_

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WAYNE NASTRI  
Regional Administrator  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Dated:\_\_\_\_\_

\_\_\_\_\_  
MARCELA VON VACANO  
Assistant Regional Counsel  
United States Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Dated:\_\_\_\_\_

FOR JOE P. WEBER III:

JOE P. WEBER III

Dated: \_\_\_\_\_